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November 14, 2000

Via Hand Delivery

Mr. K. David Waddell
Executive Secretary
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37243-0505

RE: Universal Service for Rural Areas
Docket No. 00-00523

Dear Mr. Waddell:

Please find enclosed for filing the original and 13 copies of the Brief and accompanying Sworn Testimony on behalf of Verizon Wireless in connection with the above matter. Copies of the enclosed are also being provided to parties of record.

Very truly yours,



Dan H. Elrod

DHE/dol
Enclosure

POSTED
11/14/00

**BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE**

IN RE:

**UNIVERSAL SERVICE FOR RURAL AREAS)
GENERIC DOCKET)**

DOCKET NO. 00-00523

BRIEF OF VERIZON WIRELESS

Introduction

Verizon Wireless respectfully files this brief at the direction of the Tennessee Regulatory Authority (“TRA” or the “Authority”) pursuant to the Report and Recommendation of Pre-Hearing Officer issued on November 8, 2000, in the above-referenced docket.

Discussion

The Authority requested that the parties address two Threshold Issues pertinent to this docket. Verizon Wireless hereby responds only to Threshold Issue 1.a., which presents the following questions: *Is a universal service fund needed at this time for areas served by rural carriers? If not, when will a fund be needed?*

Verizon Wireless respectfully submits that such a Tennessee intrastate universal service fund (“USF”) for rural carriers is not needed at this time because the rural markets are not yet subject to competition. Moreover, the establishment of a rural fund and a coinciding assessment against the customers of Verizon Wireless will exacerbate the conflict that already exists between the goals of universal service and assessment of USF charges against wireless customers.

As provided by the Authority in its Phase I Order of Docket No. 97-00888, it is the clear intent of the TRA to assess wireless telecommunications service providers for the financing of Tennessee's USF.¹ Because a majority of Tennessee consumers still consider the provision of cellular communications discretionary, any tax levied on a wireless provider, which is passed on to the consumer, directly affects whether consumers subscribe to wireless services.

The intent of the Authority to assess cellular companies violates Tenn. Code Ann., § 65-5-207(c)(4)², because such assessment cannot have a competitively neutral impact on wireless service providers. In fact, the fund is directly discriminatory against wireless providers. Wireless providers are intended to contribute to the fund, but, as a practical matter, have no real opportunity to qualify for funding under the TRA's proposed plan. According to the Interim Order on Phase I of Universal Service in Docket No. 97-00888, only eligible telecommunications carriers ("ETCs") can qualify to receive funding from Tennessee's USF.³ An ETC is only eligible for intrastate support if it provides each of the "core" services, as well as toll blocking service, access to directory assistance, access to interchange carriers and access to operator services.⁴ "Core" services consist of the following: "the primary access line consisting of dial tone, touch tone and usage provided to the premises of residential customers, the provision of two-way switch voice or data transmission of voice grade

¹ Phase I Order, pp. 26, 27.

² Tenn. Code Ann., § 65-5-207(c)(4), provides that the TRA shall "[a]dminister the universal support mechanism in a competitively neutral manner..."

³ Phase I Order, pp. 14-16.

⁴ See *Id.* at 16.

facilities, LifeLine, Link-up Tennessee, access to 911 Emergency Services and education discounts existing on June 6, 1995".⁵

Because of technological limitations, Verizon Wireless cannot provide some of these “core” services as defined by the Authority to qualify as an ETC, and is thereby ineligible to receive funding under Tennessee’s intrastate USF. The net effect of this is discriminatory because Verizon Wireless is required to contribute, while its ability to compete is impeded in proportion with the amount it is assessed under the Tennessee intrastate USF. Since Verizon Wireless’ services would not qualify as an ETC in Tennessee, the USF scheme in Tennessee, including a separate rural fund, will have a discriminatory impact on Verizon Wireless. The FCC has found that state universal service programs that restrict the availability of funding to, for example, ILECs only, would likely run afoul of Section 253(b) of the Federal Communications Act. See, Western Wireless Corporation Petition for Preemption of Statutes and Rules Regarding the Kansas State Universal Service Fund Pursuant to Section 253 of the Communications Act of 1934, Memorandum and Opinion and Order, FCC 00-309, ¶¶ 10-11 (rel. Aug. 28, 2000).

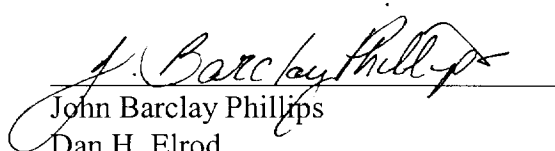
Conclusion

Verizon Wireless’ participation in contributing to Tennessee’s intrastate USF cannot be administered in a competitively neutral manner, as is required by Tenn. Code Ann., § 65-5-207(c)(4). Every dollar of required assessment from Verizon Wireless to the Tennessee USF has a direct and proportionate impact upon its ability to compete in new markets. Verizon Wireless is at a distinct competitive disadvantage because it is required to pay into the fund without the ability to receive financial support from the fund as it expands into new markets in Tennessee. The TRA should

⁵ *Id.* at 12.

therefore not create a distinct fund for rural areas, with the requirement that wireless customers contribute to such a fund.

Respectfully submitted,

A handwritten signature in cursive script, reading "John Barclay Phillips", is written over a horizontal line.

John Barclay Phillips

Dan H. Elrod

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Attorneys for Verizon Wireless

CERTIFICATE OF SERVICE

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John Barclay Phillips

BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

RECEIVED
10/10/14 10:11:29
COMMUNICATIONS
SECTION

IN RE:)
)
UNIVERSAL SERVICE FOR RURAL AREAS)
GENERIC DOCKET)

DOCKET NO. 00-00523

SWORN TESTIMONY ON PRELIMINARY ISSUES
GIVEN BY WILLIAM CHRISTOPHER JONES
ON BEHALF OF VERIZON WIRELESS

Question: *Please state your name and business address.*

Answer: My name is William Christopher Jones (W. Chris) and my business address is One
Verizon Place, Mail Code: GA1B3LGL, Alpharetta, Georgia 30004.

Question: *By whom are you employed and in what capacity?*

Answer: I am the Associate Director of State and Area Public Policy for Verizon Wireless'
Southeast Area.

Question: *Please describe your business experience.*

Answer: I joined Verizon Wireless in July, 2000, as part of the Bell Atlantic-GTE merger and
am responsible for the company's participation in state legislative and regulatory
agencies for the eight southeastern states of Alabama, Florida, Georgia, Kentucky,
Mississippi, North Carolina, South Carolina and Tennessee. From June, 1996 to

July, 2000, I served as Manager-Legislative Matters for GTE Wireless and I had responsibility for state and congressional affairs in 22 states. Before joining GTE Wireless, I worked in various external affairs jobs for GTE Service Corporation in Irving, Texas and Washington, D.C. from 1989 until June, 1996. From 1982 to 1989, I worked in various public affairs assignments for GTE Telephone Operations in Erie, Pennsylvania and Moultrie and Dalton, Georgia.

Question 1.a.: *Which services should be supported by an intrastate rural universal service system?*

Answer: I see no reason why the TRA should expand the services supported by an intrastate rural universal service fund beyond those “core” services as defined in the TRA’s Phase I Order on Docket No. 97-00888. On the issue of expanding services, the Federal Communication Commission (FCC) states that:

...supporting an overly expansive definition of core services could adversely affect all consumers by increasing the expense of the universal service program and, thus, increasing the basic cost of telecommunications services for all.¹

The FCC has, in fact, rejected efforts to increase the required bandwidth, even for voice grade service, because raising the services standard could leave “a substantial number of otherwise eligible carriers ... unable to qualify for universal service

¹ Federal-State Joint Board on Universal Service, 12 FCC Red 8776, ¶64 (1997).

support”.² I urge the TRA to consider this issue carefully. Any effort to expand the definition of supported services should include a rigorous analysis which shows the cost of such expansion and demonstrates that such additional costs are consistent with sound public policy and the state’s universal service statute. The TRA must be cognizant of the counterproductive and contradictory consumer reaction that results from raising the cost of universal service support. Excess subsidization may detract from universal service by causing a rise in rates unnecessarily, which may price some consumers out of the market.

Furthermore, there is no evidence that suggests rural areas do not share some sort of parity with urban areas in terms of what services are available. In fact, the opposite is true. A recent study shows that substantial shifts have already occurred in rural areas for Internet usage resulting in “significant gains in Internet access” for rural areas compared to central cities and urban areas.³ Rural Internet penetration now actually exceeds that of central cities.⁴ As these statistics show, the TRA may be attempting to fix a problem that does not exist if it chooses to expand beyond “core” services for Tennessee’s rural carriers.

Question 1.b.: *Should advanced telecommunications services be supported by an intrastate rural universal service fund?*

² Federal-State Joint Board on Universal Service, 13 FCC Red 5318, ¶16 (1997).

³ Falling Through the Net: Toward Digital Inclusion, U.S. Dept. of Commerce Report on Americans’ Access to Technology Tools, at 4-5 (October, 2000).

⁴ *Id.*

Answer: No. Consistent with my foregoing statement, I only believe that the core services, as defined by the TRA's Phase I Order, should be included in the intrastate USF.

Question 7.a.: *Should wireless-to-wireless calls and calls with wireless termination be included in the rural universal service fund?*

Answer: No. I contend that certain wireless revenues should remain exempt from the assessment of Tennessee's intrastate USF tax. If that tax is to be imposed on telecommunications services, the services included should at least bear some relationship to the network functions subsidized by universal service. For example, when a wireless customer calls a wireless customer, both customers pay their respective wireless carriers for the call. Revenues are generated for both the originating and terminating wireless carrier. Because a wireless-to-wireless call may never pass through the wireline network, the costs of which are paid by the universal service, both the originating and terminating wireless revenues should be excluded from the wireless carriers' assessment for universal service. Another instance for revenue exclusion is when the wireline call is made to a wireless phone. Wireless carriers typically charge for incoming and outgoing calls, whereas wireline carriers do not charge for incoming calls. To account for this difference, the TRA should permit wireless carriers to exclude from assessment the revenues associated with incoming calls to wireless handsets.

For the foregoing reasons, no universal service surcharge should apply to wireless revenues earned from wireless-to-wireless calls, and a reduced surcharge

should apply to wireless revenues from incoming calls. Moreover, in both instances, wireless carriers are already paying the LECS for use of the networks through the payments of substantial interconnection charges. While contemplating the potential reduction of assessments against wireless carriers, the TRA should note that the Kansas Corporation Commission recently ruled in Docket No. 190, 492-U, 94-GIMT-478-GIT, January 27, 1999, that there should be a wireless-to-wireless traffic adjustment of 5.03%. Wireless carriers' contribution to the Kansas universal service fund are adjusted downward by this factor in recognition of that portion of wireless calls that do not utilize landline networks.

Question: DOES THIS CONCLUDE YOUR TESTIMONY?

Answer: Yes.

Answer: Yes.

STATE OF GEORGIA)
)
COUNTY OF FULTON)

I, William Christopher Jones, being first duly sworn, state that I am the Associate Director of State and Area Public Policy for Verizon Wireless' Southeast Area; that the testimony set forth and the statements contained therein are true to the best of my knowledge, except to those matters which are stated on information and belief, and as to those matters, I believe them to be true.

Dated: 11/14/2000

William Christopher Jones

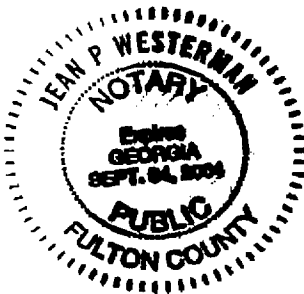
William Christopher Jones
Verizon Wireless

SWORN TO AND SUBSCRIBED before me
this 14 day of November, 2000.

Jean P. Westerman

Notary Public

My Commission Expires: _____ **JEAN P. WESTERMAN**
Notary Public, State of Georgia
Qualified in Fulton County
Commission Expires September 04, 2004



Sworn Testimony on Threshold.doc

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